

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:07-CV-176-H

JERRY PARKER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,  
et al.,

Defendants.

**MEMORANDUM AND  
RECOMMENDATION**

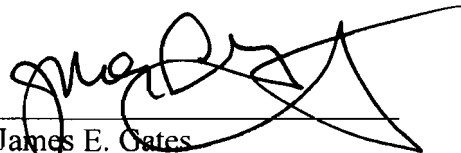
This case comes before the court on the consent motion (D.E. 265) of plaintiffs Jerry Parker, et al. (“plaintiffs”) and defendants Smithfield Packing Company, Inc. (“Smithfield”) and Premium Standard Farms, L.L.C. (collectively “defendants”) for summary judgment dismissing the claims of opt-in plaintiffs Mario C. Melindez and Betty Williams as not having been employed at defendants’ Clinton, North Carolina facility. The motion is supported by the declaration of Terrie Westbrook (D.E. 265-1), a Human Resources Specialist at Smithfield.

The Fair Labor Standards Act allows parties to recover unpaid overtime wages from their employer. 29 U.S.C. §§ 201, *et seq.* Smithfield’s records show that these two plaintiffs have not been employed at defendants’ Clinton facility. Plaintiffs’ counsel concedes that there is no evidence that these two plaintiffs have been employed there and that their claims are subject to dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure. The court finds that no genuine issues of material fact are presented and that the relief sought should be allowed.

For the foregoing reasons, it is RECOMMENDED that the parties' consent motion for summary judgment dismissing the claims of Mario C. Melindez and Betty Williams be ALLOWED and that this action be DISMISSED as to them.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 12th day of July 2010.

  
James E. Gates  
United States Magistrate Judge